IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 18TH OCTOBER 2006 / 26TH ASWINA 1928

CRL.A.No. 142 of 2002(C)

CC.154/2000 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM

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APPELLANT: COMPLAINANT

VINENDRAN, S/O.KUTTAPPAN,
ANDIKATTU PADEETTATHIL,
ERUVA MURI, PATHIYOOR VILLAGE.

BY ADV. SRI.K.HARILAL

RESPONDENTS: ACCUSED AND STATE

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1. YESHODHARAN, S/O.NARAYANAN,
CHENKILATHU KIZHAKKETHIL VEEDU,
ERUVA MURI, PATHIYOOR VILLAGE.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.K.S.SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A. No. 142 of 2002 (C)

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Dated this the 18th day of October, 2006

J U D G M E N T

The complainant in C.C.No.154/2000 of Judicial Magistrate of the First Class, Kayamkulam, is the appellant. He preferred a complaint before the court below under Section 138 of the Negotiable Instruments Act, in short 'the Act', as Exhibit P1 cheque, issued in favour of the complainant, for an amount of Rs.2,00,000/- was returned dishonoured and the demand of the amount through Exhibit P4 notice, was not met by the first respondent, accused. The appellant entered the box and was examined as PW.1. He marked 4 documents. Exhibits X1 to X3 were also brought into evidence.

2. The learned Magistrate framed the following four points:-

i. Whether the accused had drawn Ext.P1 cheque towards the discharge of the amount mentioned in it?

ii. Whether it was bounced for want of sufficient funds in the account of the accused?

iii. Whether the complainant has complied with all the statutory formalities on

dishonour of the cheque?

iv. The offence committed and punishment to be imposed.

3. Discussing point Nos.2 and 3 together at paragraph 12, the learned Magistrate found those points in favour of the complainant. However, under point No.1, the learned Magistrate had held that:-

> "when the accused has specifically disputed the source of the income to part with such a huge amount of Rs.2 lakh as claimed, it was the duty of the complainant to adduce evidence in respect of that since the complainant has specifically taken a stand that he had received that much amount 3 days prior to the transaction from his employer and he had received the salary from the same employer on issuing voucher. Hence, he could not have produced the documents to prove his source of income. An adverse inference can be drawn against him due to the non-production of the available records."

The court also further found that:-

> "from the above discussed evidence the more believable story is that of the accused that the complainant was also a subscriber of the chitty and in connection with that a blank cheque was handed over to the complainant. The source alleged by the complainant to part with the huge amount of Rs.2 lakh is not a believable story. Hence, I hold that the accused has rebutted the presumption u/s.139 of the Act. Hence I find point No.1 against the complainant."

4. In a proceedings under Section 138 of the Act, it is not necessary for the complainant to allege the details of the original transaction as it is to be presumed to have been issued for consideration unless rebutted by evidence. In Section 313 Cr.P.C statement, the accused has stated that he has not received any money from the petitioner, but he issued Exhibit P1 cheque, duly signed by him. Thus, the execution of the cheque is admitted. In such circumstances, it is for the accused to establish that, under

what circumstances, the cheque has been issued.

5. The accused has not entered the box and adduced any evidence. To rebut the presumption available in favour of the appellant-complainant, the source of the amount transacted need not be proved by the complainant unless the same is rebutted by the accused, see **Joseph Jose v.Baby** [2002(2) KLT SN.64], at page 46. In **K.N.Beena vs.Muniappan** [AIR 2001(SC) 2895], the Apex Court held that the accused has to prove during the trial by leading evidence that there was no debt or liability while issuing a cheque. In view of the above legal position, the learned Magistrate was wrong in holding that the source of the transaction was not proved by the appellant-complainant.

6. Point No.4 was not considered by the learned Magistrate as point No.1 was found against the appellant. In view of the above principles of law and facts, the findings of the learned Magistrate under point No.1, is not sustainable. Hence, I set aside the same. In the light of the above discussions, I hold that the points 1 to 3 have been found in favour of the appellant-complainant.

7. Though the notice was issued to the first

respondent-accused, he has chosen not to appear before this court. Therefore, I heard the arguments advanced by the counsel for the appellant. In the above fact situation, I set aside the findings under point No.4 and the acquittal of the accused. C.C.No.154/2000, is restored to the file of the Judicial Magistrate of the First Class, Kayamkulam.

8. The parties shall appear before the court below on 23/11/2006.

9. The learned Magistrate shall hear the first respondent-accused and enter a finding on point No.4 also, in the light of the discussions held above. After arriving at a finding on point No.4, the learned Magistrate shall dispose of the same as per the law. This disposal shall be as early as possible, in any case, within two months from the date of appearance of the parties.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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Crl.A. No. 142 of 2002(C)

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J U D G M E N T

18th October, 2006